

STATE OF MICHIGAN
COURT OF APPEALS

In re CORNWELL, Minor.

UNPUBLISHED
March 17, 2020

No. 350123
Jackson Circuit Court
Family Division
LC No. 15-003318-NA

Before: BOONSTRA, P.J., and RIORDAN and REDFORD, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s order terminating his parental rights to his daughter under MCL 712A.19b(3)(c)(i) (adjudication conditions continue to exist). We affirm.

I. BACKGROUND

When this case began, respondent was on parole for attempted third-degree criminal sexual conduct (CSC-III). He began visitation with the child but soon became incarcerated after he violated his parole conditions by possessing marijuana and testing positive for marijuana and cocaine, and by possessing an unauthorized cellphone. Respondent remained incarcerated as of the date that his parental rights were terminated.

II. STATUTORY GROUNDS

Respondent argues that the trial court clearly erred in finding that clear and convincing evidence established statutory grounds under MCL 712A.19b(3)(c)(i), because the inability to care for one’s child as a result of incarceration does not constitute grounds for termination and a single positive drug screen does not constitute grounds for termination on a theory of anticipatory neglect. We disagree.

“We review for clear error a trial court’s factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence.” *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). “A finding is ‘clearly erroneous’ if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d

105 (2009) (citation omitted). “We give deference to the trial court’s special opportunity to judge the credibility of the witnesses.” *Id.* (citation omitted).

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. MCL 712A.19b(3); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5).

“The mere present inability to personally care for one’s children as a result of incarceration does not constitute grounds for termination.” *In re Mason*, 486 Mich at 160. That is, a trial court may not terminate a respondent’s parental rights solely because of his incarceration. *Id.* Moreover, “drug use alone, in the absence of any connection to abuse or neglect, cannot justify termination solely through operation of the doctrine of anticipatory neglect.” *In re LaFrance*, 306 Mich App 713, 731; 858 NW2d 143 (2014).

The trial court terminated respondent’s parental rights under MCL 712A.19b(3)(c)(i), which provides:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

Respondent contests the trial court’s findings that the issues that led to adjudication continued to exist and that he would not be able to rectify them within a reasonable time. The record reflects that respondent’s inability to provide proper care or custody for the child because of his parole status for attempted CSC-III and his lack of stable housing led to the adjudication. While on parole, respondent failed to secure adequate housing and although he had employment, no evidence indicated that he had secured or even had plans for employment or housing after his release. The record reflects that respondent failed to complete a psychological examination, work on his parenting skills and emotional stability, and failed to overcome his substance abuse problem.

Evidence established that respondent used marijuana and cocaine while on parole. He also possessed and used an unauthorized cellphone to access pornographic websites. In so doing, respondent violated the conditions of his parole which led to his reincarceration. Although while

on parole respondent began to participate in services such as parenting visits, once he became reincarcerated he no longer had the ability to do so.

Evidence also established that a bond did not exist between respondent and the child. He participated only in six parenting time visits. The record reflects that, at the time of the termination, respondent expected to remain incarcerated for at least two more months and it would be at least another nine months after his earliest release date before reunification could even be considered, at which point the child would have been in care for about two years.

Clear and convincing evidence established that the conditions that led to adjudication continued to exist and no reasonable expectation existed that respondent could rectify the conditions within a reasonable time considering the child's age. Respondent is correct that incarceration alone, and drug use alone, do not suffice to terminate parental rights. In this case, however, the trial court did not rely on those established facts alone for its decision that statutory grounds existed warranting termination of respondent's parental rights. Rather, respondent's drug use, lack of housing, lack of a bond with the child, violations of the conditions of parole, his reincarceration, and failure to participate in services, necessitated terminating his parental rights. The trial court, therefore, did not err.

III. BEST INTERESTS

Respondent also argues that the trial court clearly erred in finding that termination of his parental rights served the child's best interests. We disagree.

The trial court must find by a preponderance of the evidence that termination serves the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's findings of fact are reviewed for clear error. *In re HRC*, 286 Mich App at 459.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). In determining a child's best interests, the trial court may consider a number of factors including the child's bond to his or her parents; the parents' parenting ability; the child's need for permanency, stability, and finality; and the advantages of a foster home over the parents' home. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "The trial court may also consider . . . the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014) (citations omitted). The trial court may also consider the parent's substance abuse problem as well as the parent's ability to provide the child a stable home. *In re Moss*, 301 Mich App at 90.

In this case, the caseworker testified that no bond existed between respondent and the child. Respondent testified that a bond existed. The trial court appropriately considered the conflicting evidence and determined that a strong bond did not exist between them.

The evidence established that the child enjoyed a stable home with a foster family willing to adopt her. Further, evidence indicated that the child needed stability and permanence both of which were lacking until she came into care and placed in foster care because her parents lacked

the ability to provide proper care and custody for her. The caseworker testified: “Given that [the child] has been in and out of foster care for so long of her short life I think it would be in her best interest[s] to give her permanency” which could only be accomplished by terminating respondent’s parental rights.

The record reflects that respondent failed and could not fulfill his case service plan. He participated in the agency treatment plan while on parole, but upon reincarceration for his parole violations he lacked the ability to do so. Further, evidence established that housing remained a constant issue for respondent and he lacked a suitable plan for stable, permanent housing after his release from prison.

The record reflects that a preponderance of the evidence supports the trial court’s determination that termination of respondent’s parental rights served the child’s best interests. Therefore, the trial court did not err by terminating respondent’s parental rights.

Affirmed.

/s/ Mark T. Boonstra

/s/ Michael J. Riordan

/s/ James Robert Redford